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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,279	07/31/2003	Keith A. Ranieri	FIRS-2992	3766
5409 7590 11/24/2009 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110				
EXAMINER UTAMA, ROBERT J				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
11/24/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/631,279

Applicant(s)

RANIERE, KEITH A.

Examiner

ROBERT J. UTAMA

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

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DETAILED ACTION

Status of the application

1. This office action is a response to the amendment and argument filed on 08/07/2009. The current status of the application is as follows: claims 1, 4-8, 17-20 are still pending, claims 2-3 have been cancelled and claims 9-16, 21-33 have been withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 4-8, 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification provided do not provide enabling disclosure for a control system that determine a point of efficiency occurring to the trainable subject no longer being able to accommodate additional stress and entering state of inefficiency causing the at least one parameter to vary differently then before. The section of specification cited in the argument do not provide any method, algorithm and/or control structure for one of ordinary skilled in the art to determine if the parameter vary differently then before. The term “before” is also ambiguous since it is not clear that the applicant is referring to a previous training session or the applicant is referring to a

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period of time before the present time. The specification also do not provide enabling disclosure for one of ordinary skilled the art that sufficient change to identify that one parameter has vary significantly.

5. Claims 1, 4-8, 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 17 require that one parameter to vary differently then before. The term "before" is also ambiguous since it is not clear that the applicant is referring to a previous training session or the applicant is referring to a period of time before the present time.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 1, 4-8 and 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Hall-Tipping US 5,001,632 and further in view of Stratton et al.**

Claim 1: The Hall-Tipping reference provides a teaching of a method of comprising of: determining a point of efficiency of a trainable subject with at least one parameter (see Hall-Tipping col. 6:1-9, col. 5:35-45 "optimal level of activity"); a control system that determines a range of tolerance surrounding the point of efficiency (see Hall-Tipping col. 5:35-45 Upper and lower heart rate and FIG. 2 Maximum and Minimum aerobic heart rate); training said trainable subject within said range of tolerance of said point of efficiency with respect to a state of accommodation (see col. 6:9-23). The Hall-Tipping

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reference provides a teaching where the efficiency is determined by a linear proportional rate of change in the at least one parameter (see FIG 3 and col. 5:40-60). The Hall-Tipping reference does not provide teaching of training said subject until exhaustion occurs. It is understood that the exhaustion would cause the at least one parameter to vary differently then before. However, the Stratton et al reference provides a teaching of training said subject until exhaustion occurs (see Stratton et al page 1649 item "Study Protocol). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of of training said subject until exhaustion occurs, as taught by Stratton et al, would increase the user's peak cardiac output (see Stratton et al page 1653).

Claim 4 and 18: The Hall-Tipping reference provides a teaching of is one of a physical parameter (see col. 4:30-37 "heart rate").

Claim 5 and 19: The Hall Tipping reference does not provide a teaching of at least one physical parameter of blood pressure. However, the Stratton teaches that one of the physical parameter selected is the subject blood pressure (see Stratton page 1649 under the heading "Data Collection and Processing). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of least one physical parameter of blood pressure, as taught by Stratton et al, because it would enable the system to better analyze the user's physical activity level.

Claim 6 and 20: The Hall-Tipping reference provides a teaching of is one of a physical parameter of a heart rate (see col. 4:30-37 "heart rate").

Claim 7: The Hall-Tipping reference provides a teaching where the parameter observed by the a signal of physical motion (see col. 3:65-4:5 "speed sensor monitoring the speed of movement").

Claim 8: The Hall-Tipping reference provides a teaching of having a trainable subject selected from a human (see col. 3:5-25).

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Claim 17: The Hall-Tipping reference provides a teaching of providing a performance system (see Abstract "exercise bicycle"), activating the performance system (see Abstract); recording at least one parameter of the performance system (see col. 4:25-35 "Speed of villain" and col. 2:40-55 and col. 3:5-25 "difficulty level"), determining at least one point of efficiency parameter with respect of a state of accommodation by changing at least one parameter of the performance system until at least one parameter of the subject substantially changes beyond a given tolerance function (see Hall-Tipping col. 6:1-9, col. 5:35-45 "optimal level of activity"); determining a range of tolerance surrounding the point of efficiency (see Hall-Tipping col. 5:35-45 Upper and lower heart rate and FIG. 2 Maximum and Minimum aerobic heart rate); training said trainable subject within said range of tolerance of said point of efficiency with respect to a state of accommodation (see col. 6:9-23). The Hall-Tipping reference provides a teaching where the efficiency is determined by a linear proportional rate of change in the at least one parameter (see FIG 3 and col. 5:40-60). The Hall-Tipping reference does not provide teaching of training said subject until exhaustion occurs. However, the Stratton et al reference provides a teaching of training said subject until exhaustion occurs (see Stratton et al page 1649 item "Study Protocol"). It is understood that the exhaustion would cause the at least one parameter to vary differently then before. Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of training said subject until exhaustion occurs, as taught by Stratton et al, would increase the user's peak cardiac output (see Stratton et al page 1653).

Response to Arguments

8. Applicant's arguments filed 08/07/2009 have been fully considered but they are not persuasive.
9. With respect applicant's argument that the Hall-Tipping teaches away from training until the point exhaustion. The examiner respectfully disagrees. Teaching

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away requires that the reference(s) discourage, discredit the combination as proposed by the examiner. In this particular case, no such teaching away reference exist. At best, the combination proposed would extend the amount of training time. As such, the examiner takes the position that applicant's position to be unpersuasive.

10. With respect to applicant's argument that the Stratton reference do not provide teaching of a training process rather, the applicant argues that the Stratton reference provide a teaching of testing process. The examiner respectfully disagrees. Training until the point of exhaustion have been widely recognized as a valid form of training (see NPL "Should I train to Failure?").

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on M-F 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./

Examiner, Art Unit 3715

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3715